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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Chelsea Renay Bonham,

10 Plaintiff,

11 v.

12 Commissioner of Social Security  
13 Administration,

14 Defendant.

No. CV-23-00103-PHX-DWL

**ORDER**

15 Plaintiff challenges the denial of her applications for benefits under the Social  
16 Security Act (“the Act”) by the Commissioner of the Social Security Administration  
17 (“Commissioner”). The Court has reviewed Plaintiff’s opening brief (Doc. 11), the  
18 Commissioner’s answering brief (Doc. 13), and Plaintiff’s reply (Doc. 16), as well as the  
19 Administrative Record (Doc. 8, “AR”), and now reverses the decision of the  
20 Administrative Law Judge (“ALJ”) and remands for further proceedings.

21 **I. Procedural History**

22 In July 2020, Plaintiff filed applications for disability and disability insurance  
23 benefits and for supplemental security income, eventually alleging a disability onset date  
24 of May 1, 2020. (AR at 15.) The Social Security Administration (“SSA”) denied  
25 Plaintiff’s applications at the initial and reconsideration levels of administrative review and  
26 Plaintiff requested a hearing before an ALJ. (*Id.*) On March 1, 2022, following a  
27 telephonic hearing, the ALJ issued an unfavorable decision. (*Id.* at 15-29.) The Appeals  
28 Council later denied review. (*Id.* at 1-5.)

## II. The Sequential Evaluation Process And Judicial Review

To determine whether a claimant is disabled for purposes of the Act, the ALJ follows a five-step process. 20 C.F.R. § 404.1520(a). The claimant bears the burden of proof on the first four steps, but the burden shifts to the Commissioner at step five. *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). At the first step, the ALJ determines whether the claimant is presently engaging in substantial gainful activity. 20 C.F.R. § 404.1520(a)(4)(i). At step two, the ALJ determines whether the claimant has a “severe” medically determinable physical or mental impairment. 20 C.F.R. § 404.1520(a)(4)(ii). At step three, the ALJ considers whether the claimant’s impairment or combination of impairments meets or medically equals an impairment listed in Appendix 1 to Subpart P of 20 C.F.R. Part 404. 20 C.F.R. § 404.1520(a)(4)(iii). If so, the claimant is automatically found to be disabled. *Id.* At step four, the ALJ assesses the claimant’s residual functional capacity (“RFC”) and determines whether the claimant is still capable of performing past relevant work. 20 C.F.R. § 404.1520(a)(4)(iv). If not, the ALJ proceeds to the fifth and final step, where she determines whether the claimant can perform any other work in the national economy based on the claimant’s RFC, age, education, and work experience. 20 C.F.R. § 404.1520(a)(4)(v). If not, the claimant is disabled. *Id.*

An ALJ’s factual findings “shall be conclusive if supported by substantial evidence.” *Biestek v. Berryhill*, 139 S. Ct. 1148, 1153 (2019). The Court may set aside the Commissioner’s disability determination only if it is not supported by substantial evidence or is based on legal error. *Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir. 2007). Substantial evidence is relevant evidence that a reasonable person might accept as adequate to support a conclusion considering the record as a whole. *Id.* Generally, “[w]here the evidence is susceptible to more than one rational interpretation, one of which supports the ALJ’s decision, the ALJ’s conclusion must be upheld.” *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002) (citations omitted). In determining whether to reverse an ALJ’s decision, the district court reviews only those issues raised by the party challenging the decision. *Lewis v. Apfel*, 236 F.3d 503, 517 n.13 (9th Cir. 2001).

1     III.     The ALJ's Decision

2             The ALJ found that Plaintiff had not engaged in substantial, gainful work activity  
3 since the amended alleged onset date of May 1, 2020 and that Plaintiff had the following  
4 severe impairments: "bipolar disorder, depression, anxiety, diabetes, colitis, status-post  
5 cholecystectomy, visual impairment, obesity, lumbar degenerative disc disease, and  
6 thoracic spine idiopathic skeletal hyperostosis." (AR at 18.) Next, the ALJ concluded that  
7 Plaintiff's impairments did not meet or medically equal a listing. (*Id.* at 18-22.) Next, the  
8 ALJ calculated Plaintiff's RFC as follows:

9             [T]he claimant has the residual functional capacity to perform light work as  
10 defined in 20 CFR 404.1567(b) and 416.967(b) with the following additional  
11 limitations: occasional climbing ramps and stairs; no climbing ladders, ropes,  
12 or scaffolds; occasional stooping, kneeling, crouching, and crawling; the  
13 avoidance of unprotected heights, workplace hazards, and moving  
14 machinery; occasional pushing and pulling a maximum of 10 pounds with  
15 the upper and lower extremities; the claimant must alternate sitting and  
16 standing by sitting for 15 minutes after every 45 minutes of standing  
remaining on task; no work with vibrations; the avoidance of no more than  
moderate exposure to cold temperatures; simple, routine tasks not at a  
production pace; occasional interactions with supervisors and co-workers; no  
interactions with the general public; occasional changes to a routine work  
setting; no work requiring near or far acuity, depth perception, or peripheral  
vision or field of vision with right eye; and no reading very fine print.

17     (*Id.* at 22.)

18             As part of this RFC determination, the ALJ evaluated Plaintiff's symptom  
19 testimony, concluding that "[a]fter review of the record, the undersigned determined that  
20 it does not support the claimant's allegations of disabling symptoms." (*Id.* at 23.)  
21 Elsewhere, the ALJ elaborated: "[T]he claimant's allegations concerning the intensity,  
22 persistence and limiting effects of these symptoms are not entirely consistent with the  
23 medical evidence and other evidence for the reasons explained in this decision." (*Id.* at  
24 26.) The ALJ also evaluated opinion evidence from various medical sources, concluding  
25 as follows: (1) various state agency medical consultants ("not . . . persuasive"); (2)  
26 Matthew Doust, M.D. ("not . . . persuasive"); and (3) various state agency psychological  
27 consultants ("not . . . persuasive"). (*Id.* at 24-25.)

28             Based on the testimony of a vocational expert, the ALJ concluded that although

1 Plaintiff was incapable of performing her past relevant work as a CNA, she was capable of  
 2 performing other jobs that exist in significant numbers in the national economy, including  
 3 door-to-door pamphlet distributor, cafeteria attendant, and cleaner/housekeeper. (*Id.* at 26-  
 4 28.) Thus, the ALJ concluded that Plaintiff is not disabled. (*Id.* at 28-29.)

#### 5 IV. Discussion

6 Plaintiff presents two issues on appeal: (1) whether the ALJ erred in discrediting the  
 7 opinions of Dr. Doust; and (2) whether the ALJ erred in discrediting her symptom  
 8 testimony. (Doc. 11 at 1.) Plaintiff further argues that “[r]emand for calculation of benefits  
 9 would be an appropriate remedy in this case. Only in the alternative should this Court  
 10 remand for further administrative proceedings.” (*Id.* at 22.)

#### 11 A. **Dr. Doust**

##### 12 1. Standard Of Review

13 In January 2017, the SSA amended the regulations concerning the evaluation of  
 14 medical opinion evidence. *See Revisions to Rules Regarding Evaluation of Medical*  
 15 *Evidence*, 82 Fed. Reg. 5844 (Jan. 18, 2017). Because the new regulations apply to  
 16 applications filed on or after March 27, 2017, they are applicable here.

17 The new regulations, which eliminate the previous hierarchy of medical opinions,  
 18 provide in relevant part as follows:

19 We will not defer or give any specific evidentiary weight, including  
 20 controlling weight, to any medical opinion(s) or prior administrative medical  
 21 finding(s), including those from your medical sources . . . . The most  
 22 important factors we consider when we evaluate the persuasiveness of  
 23 medical opinions and prior administrative medical findings are supportability  
 24 . . . and consistency . . . .

25 20 C.F.R. § 416.920c(a).<sup>1</sup> Regarding the “supportability” factor, the new regulations  
 26 explain that the “more relevant the objective medical evidence and supporting explanations  
 27 presented by a medical source are to support his or her medical opinion(s), . . . the more

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28 <sup>1</sup> Other factors that may be considered by the ALJ in addition to supportability and  
 consistency include the provider’s relationship with the claimant, the length of the  
 treatment relationship, the frequency of examinations, the purpose and extent of the  
 treatment relationship, and the specialization of the provider. 20 C.F.R. § 416.920c(c).

1 persuasive the medical opinions . . . will be.” *Id.* § 404.1520c(c)(1). Regarding the  
 2 “consistency” factor, the “more consistent a medical opinion(s) . . . is with the evidence  
 3 from other medical sources and nonmedical sources in the claim, the more persuasive the  
 4 medical opinion(s) . . . will be.” *Id.* § 404.1520c(c)(2)

5 Recently, the Ninth Circuit confirmed that the “recent changes to the Social Security  
 6 Administration’s regulations displace our longstanding case law requiring an ALJ to  
 7 provide ‘specific and legitimate’ reasons for rejecting an examining doctor’s opinion.”  
 8 *Woods v. Kijakazi*, 32 F.4th 785, 787 (9th Cir. 2022). Thus, “the former hierarchy of  
 9 medical opinions—in which we assign presumptive weight based on the extent of the  
 10 doctor’s relationship with the claimant—no longer applies. Now, an ALJ’s decision,  
 11 including the decision to discredit any medical opinion, must simply be supported by  
 12 substantial evidence.” *Id.* With that said, “[e]ven under the new regulations, an ALJ cannot  
 13 reject an examining or treating doctor’s opinion as unsupported or inconsistent without  
 14 providing an explanation supported by substantial evidence. The agency must articulate  
 15 how persuasive it finds all of the medical opinions from each doctor or other source and  
 16 explain how it considered the supportability and consistency factors in reaching these  
 17 findings.” *Id.* at 792 (cleaned up). Although an “ALJ can still consider the length and  
 18 purpose of the treatment relationship, the frequency of examinations, the kinds and extent  
 19 of examinations that the medical source has performed or ordered from specialists, and  
 20 whether the medical source has examined the claimant or merely reviewed the claimant’s  
 21 records . . . the ALJ no longer needs to make specific findings regarding these relationship  
 22 factors . . . .” *Id.*

## 23 2. Dr. Doust’s Opinions

24 On February 8, 2022, Dr. Doust filled out a form entitled “Pain Functional Capacity  
 25 (RFC) Questionnaire.” (AR at 1352-53.) In response to the first question, Dr. Doust  
 26 checked a box indicating that Plaintiff has pain. (*Id.*) In response to the second question,  
 27 Dr. Doust checked a box indicating that Plaintiff’s level of pain severity was “Severe,”  
 28 which was defined in the form as “Extremely impaired due to pain which precludes ability

1 to function.” (*Id.*) In response to the third question, Dr. Doust checked a box indicating  
 2 that “the above noted degree of pain [can] reasonably be expected to result from objective  
 3 clinical or diagnostic findings, which have been documented either by you, or elsewhere  
 4 in the claimant’s medical records.” (*Id.*) In response to the fourth question, Dr. Doust  
 5 checked boxes indicating that the following factors precipitated Plaintiff’s pain: changing  
 6 weather, movement/overuse, stress, and static position. (*Id.*) In response to the fifth  
 7 question, Dr. Doust checked a box indicating that Plaintiff’s pain would “constantly” be  
 8 “sufficiently severe to interfere with attention and concentration.” (*Id.*) In response to the  
 9 sixth question, Dr. Doust checked a box indicating that Plaintiff would “constantly”  
 10 “experience deficiencies of concentration, persistence or pace resulting in failure to  
 11 complete tasks in a timely manner (in work settings or elsewhere).” (*Id.* at 1353.)

### 12 3. The ALJ’s Evaluation Of Dr. Doust’s Opinions

13 The ALJ found Dr. Doust’s opinions “not . . . persuasive.” (AR at 25.) The ALJ’s  
 14 full rationale was as follows:

15 [T]he undersigned considered the opinion of Matthew Doust, M.D. Dr.  
 16 Doust opined the claimant has severe pain that constantly interferes with  
 17 attention and concentration. The undersigned does not find the opinion  
 18 persuasive. The opinion is not supported by Dr. Doust’s physical  
 19 examination findings. Physical examination reveals a slightly antalgic gait  
 20 and limited spinal range of motion but is otherwise normal. Likewise, the  
 opinion is not consistent with the degree of abnormality present on imaging.  
 Imaging of the lumbar spine reveals mild to moderate spondylosis and facet  
 arthrosis as well as narrowing of the lateral recesses/neural foramina. There  
 is no evidence of fractures, malalignment, or canal stenosis.

21 (*Id.*, record citations omitted.)

### 22 4. The Parties’ Arguments

23 Plaintiff argues that “[i]n finding Dr. Doust’s assessment unpersuasive, the ALJ  
 24 failed to provide a rational explanation supported by substantial evidence and failed to  
 25 *articulate* and *explain* the ALJ’s rationale to reject the medical opinion by addressing  
 26 *relevant* objective evidence and explanations that support and/or are consistent with the  
 27 medical opinion being evaluated.” (Doc. 11 at 11.) More specifically, Plaintiff argues that  
 28 the ALJ’s supportability analysis was flawed “because the ALJ only discussed [Plaintiff’s]

1 slightly antalgic gait and limited range of motion and did not explain why other positive  
2 findings that supported Dr. [Doust's] assessed limitations were not relied on.” (*Id.* at 11-  
3 13.) Plaintiff elaborates: “The record shows that at nearly every Pain Center treatment visit  
4 except the visits the ALJ cited, Dr. Doust or other providers in Dr. Doust’s office observed  
5 that [Plaintiff] had tenderness to palpation of bilateral lumbar paraspinous muscles, limited  
6 spinal range of motion, and pain with lumbar facet loading maneuvers. Dr. Doust’s  
7 prescribed course of treatment also supported Dr. Doust’s assessed limitations. [Plaintiff]  
8 took prescribed opioid pain medications and had multiple invasive pain management  
9 procedures like facet injections, nerve blocks, and nerve burning (ablation) in attempts to  
10 improve [Plaintiff’s] chronic pain.” (*Id.* at 13, citations omitted.) Finally, Plaintiff argues  
11 that the ALJ’s consistency analysis was flawed “because the ALJ again relied on only  
12 *portions* of the relevant imaging, ignoring other portions that tended to support and were  
13 consistent with Dr. Doust’s assessed limitations. For example, . . . [t]he ALJ did not include  
14 discussion of the CT scan of [Plaintiff’s] thoracic spine, which showed Bonham had diffuse  
15 osteoporosis and idiopathic skeletal hyperostosis from T5 through T10. . . . [T]he ALJ did  
16 not discuss this imaging or the procedures and failed to explain why these records were left  
17 out of the analysis of whether Dr. Doust’s assessment was consistent with the medical  
18 evidence.” (*Id.* at 13-14, citations omitted.) Plaintiff also argues that, if the ALJ had  
19 accepted Dr. Doust’s opined-to limitations, she would have been found to be disabled. (*Id.*  
20 at 14-16.)

21 In response, the Commissioner defends the sufficiency of the ALJ’s analysis. (Doc.  
22 13 at 2-4.) As for the supportability factor, the entirety of the Commissioner’s argument  
23 (apart from identifying the relevant standards) is as follows: “[T]he ALJ considered that  
24 Dr. Doust’s examinations revealed only a slightly antalgic gait and some limited spinal  
25 range of motion but were otherwise ‘normal.’ It is also worth noting that the contested  
26 opinion is nothing more than a check the box form with no explanation of the opinion for  
27 extreme limitations. Under the revised regulations, the supportability factor considers  
28 whether the medical sources provide an explanation and objective findings to justify the



1 degree of assessed limitation. These check box forms do not contain either an explanation  
 2 or objective findings to support these extreme limitations. Accordingly, these check the  
 3 box opinions are of little evidentiary value.” (*Id.* at 3.) As for the consistency factor, the  
 4 Commissioner simply repeats the ALJ’s analysis without offering any argument as to why  
 5 it was sufficient: “[T]he ALJ found that Dr. Doust’s opinions are inconsistent with the  
 6 objective imaging which showed only mild to moderate spondylosis and facet arthrosis of  
 7 the lumbar spine as well as narrowing of the lateral recesses/neural foramina; with no  
 8 evidence of fractures, malalignment, or canal stenosis.” (*Id.* at 3-4.) Nowhere does the  
 9 Commissioner acknowledge Plaintiff’s argument that the ALJ cherry-picked the record or  
 10 attempt to explain why that argument is incorrect. (*Id.*)

11 In reply, Plaintiff repeats the arguments from her opening brief and argues that, to  
 12 the extent “[t]he Commissioner adds impermissible post hoc reasoning, that Dr. Doust’s  
 13 assessment was a ‘check the box form,’ . . . the ALJ did not rely on this as a reason to reject  
 14 Dr. Doust’s assessment, and an established principle of judicial review is that a reviewing  
 15 court may not affirm based on facts or rationale upon which the agency did not rely.” (Doc.  
 16 16 at 3-5.)

## 17 5. Analysis

18 The Court agrees with Plaintiff that the ALJ failed to provide legally sufficient  
 19 reasons for discrediting Dr. Doust’s opinions. Although the ALJ considered the  
 20 supportability and consistency factors, the ALJ’s reasoning as to each factor was not  
 21 supported by substantial evidence.

22 As for supportability, the ALJ’s sole basis for discrediting Dr. Doust’s opinions was  
 23 that “Dr. Doust’s physical examination findings . . . reveal[] a slightly antalgic gait and  
 24 limited spinal range of motion but [are] otherwise normal.” (AR at 25.) In support, the  
 25 ALJ cited three treatment records, “9F/1, 5, 9.” (*Id.*) There are two problems with this  
 26 analysis. First, it is not clear—and, at a minimum, the ALJ did not explain—why largely  
 27 “normal” physical examination findings would be inconsistent with Dr. Doust’s opinions,  
 28 which were focused on Plaintiff’s pain level, not Plaintiff’s walking ability or range of



1 motion. Indeed, in all three of the cited records, Dr. Doust made notations about Plaintiff's  
2 pain level that appear to be consistent with the opinions Dr. Doust later offered on that  
3 topic. (AR at 728 [noting that Plaintiff's "chief complaint" was pain, that Plaintiff  
4 described the pain as "Burning, Sharp, Stabbing," and that Plaintiff described the pain as  
5 "Severe"]; *id.* at 732 [same]; *id.* at 736 [same].) Second, although the three records cited  
6 by the ALJ contain largely normal physical examination findings, several other records  
7 from Dr. Doust (or Dr. Doust's office) contain abnormal findings. (*See, e.g., id.* at 808  
8 ["patient reports tenderness bilateral lumbar paraspinous," "patient reports limited  
9 flexion/extension," "patient reports pain with Lumbar Facet Loading Maneuver"]; *id.* at  
10 788 [same]; *id.* at 784 [same].)

11 In the answering brief, the Commissioner makes no effort to rebut Plaintiff's  
12 contention that the ALJ engaged in impermissible cherry-picking by ignoring these  
13 treatment records. Instead, the Commissioner's primary argument appears to be that the  
14 Court should affirm the ALJ's lack-of-supportability finding on the ground that Dr. Doust's  
15 opinions were set forth in an unexplained check-box form. On the one hand, the Court  
16 agrees with the Commissioner that this *could* have been a permissible basis for the ALJ to  
17 discredit Dr. Doust's opinions pursuant to the supportability factor. *See, e.g., Martinez v.*  
18 *Comm'r of SSA*, 2023 WL 6211407, \*5 (D. Ariz. 2023). On the other hand, and as Plaintiff  
19 correctly notes in her reply brief, the Court cannot affirm on this basis because the ALJ did  
20 not identify this as a reason for discrediting Dr. Doust's opinions. *Bray v. Comm'r of Soc.*  
21 *Sec. Admin.*, 554 F.3d 1219, 1225-26 (9th Cir. 2009) ("Long-standing principles of  
22 administrative law require us to review the ALJ's decision based on the reasoning and  
23 factual findings offered by the ALJ—not post hoc rationalizations that attempt to intuit  
24 what the adjudicator may have been thinking.").

25 The ALJ's consistency analysis was flawed for the same reasons as the  
26 supportability analysis. Although the ALJ identified certain imaging records that did not  
27 show a high "degree of abnormality," the ALJ made no attempt to explain why such records  
28 were inconsistent with Dr. Doust's pain-related opinions. Additionally, and as Plaintiff

notes in her brief (Doc. 11 at 14), some of the imaging records not discussed by the ALJ depict various abnormalities. (*See, e.g.*, AR at 834 [“There is diffuse osteoporosis. There is idiopathic skeletal hyperostosis from T5 through T10. . . . There is Subcutaneous edema/infiltration posterior to the thoracic spine.”].) Perhaps there is a good explanation for why such imaging records should still be viewed as inconsistent with Dr. Doust’s opinions, but the ALJ did not offer such an explanation in the underlying decision (and the Commissioner does not even attempt to offer a *post hoc* explanation in the answering brief). The Court cannot affirm on this record.

## **B. Plaintiff’s Symptom Testimony**

### **1. Standard Of Review**

An ALJ must evaluate whether the claimant has presented objective medical evidence of an impairment that “could reasonably be expected to produce the pain or symptoms alleged.” *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035-36 (9th Cir. 2007) (citations omitted). If so, “an ALJ may not reject a claimant’s subjective complaints based solely on a lack of medical evidence to fully corroborate the alleged severity of pain.” *Burch v. Barnhart*, 400 F.3d 676, 682 (9th Cir. 2005). Instead, the ALJ may “reject the claimant’s testimony about the severity of [the] symptoms” only by “providing specific, clear, and convincing reasons for doing so.” *Brown-Hunter v. Colvin*, 806 F.3d 487, 488-89 (9th Cir. 2015).

### **2. The ALJ’s Evaluation Of Plaintiff’s Symptom Testimony**

As noted, the ALJ concluded that Plaintiff’s “allegations concerning the intensity, persistence and limiting effects of these symptoms are not entirely consistent with the medical evidence and other evidence for the reasons explained in this decision.” (AR at 26.) Altogether, the ALJ identified six reasons for this adverse credibility finding: (1) “[t]he claimant’s allegations are not supported by physical examination”; (2) “[t]he claimant’s allegations are not supported by radiographic and other objective evidence”; (3) “[t]he claimant’s treatment for her physical conditions has been conservative and limited in nature”; (4) “the extent of the claimant’s psychological allegations is not supported by

1 the findings on mental status examination”; (5) “[t]he claimant’s mental health treatment  
2 has been conservative and limited since the amended alleged onset date”; and (6) “the  
3 claimant has described daily activities, which are not limited to the extent one would  
4 expect, given the complaints of disabling symptoms and limitations.” (*Id.* at 23-24, 26.)

5           3.     The Parties’ Arguments

6           Plaintiff argues that the ALJ provided insufficient reasons for discrediting her  
7 symptom testimony. (Doc. 11 at 16-22.) In general, Plaintiff argues that the ALJ’s analysis  
8 was deficient because the ALJ simply “listed select medical records and imaging” without  
9 explaining why the cited materials were inconsistent with her testimony. (*Id.* at 18.)  
10 Plaintiff further argues that the ALJ’s discussion of conservative treatment was “an  
11 insufficient reason to reject [her] symptom testimony” because “there is no evidence that  
12 any other courses of treatment were suggested for [her] impairments” and “no evidence  
13 that any other types of treatment would have changed the outcome of [her] chronic pain.”  
14 (*Id.* at 18-19.) Plaintiff also contends that “other courts have doubted that prescriptions of  
15 strong narcotic medications, with potential serious side effects, and a course of epidural  
16 steroid injections, may properly be considered ‘conservative care.’” (*Id.* at 20.) Finally,  
17 Plaintiff contends that “[t]he vocational expert’s testimony, coupled with [her] credible  
18 symptom testimony, would require an ALJ to find [her] disabled.” (*Id.* at 21.)

19           In response, the Commissioner contends that the ALJ’s decision to discredit  
20 Plaintiff’s symptom testimony was proper because (1) “Plaintiff’s statements . . . were not  
21 consistent with the medical evidence”; (2) “Plaintiff’s allegedly disabling impairments  
22 responded well to treatment”; and (3) “although Plaintiff alleged pain with activity, she  
23 was able to wash laundry, cleaned her room and the bathroom, went shopping, and  
24 performed her personal care independently during the relevant period” and “[d]espite  
25 Plaintiff’s allegations that she had difficulty concentrating and required isolation, the ALJ  
26 noted that Plaintiff read, watched television, handled money, played computer and phone  
27 games daily, and got along with authority figures, friends, neighbors and family.” (Doc.  
28 13 at 4-6.)

1 In reply, Plaintiff argues that “the Commissioner fails to defend the ALJ’s  
2 insufficient rationale, and simply lists known regulations, then repeats the ALJ’s rationale  
3 and relied upon findings, without showing that the ALJ decision in fact complied with the  
4 *correct* standard for a claimant credibility evaluation or responding to [Plaintiff’s]  
5 arguments regarding the same.” (Doc. 16 at 6.) Next, Plaintiff repeats her earlier  
6 arguments regarding her course of treatment. (*Id.* at 6-7.) As for the Commissioner’s  
7 arguments regarding her activities of daily living, Plaintiff responds that “a mere list of  
8 activities, without more, fails to show that a claimant’s symptom testimony is invalid.” (*Id.*  
9 at 7-8.)

#### 10 4. Analysis

11 The Court finds no harmful error in the ALJ’s evaluation of Plaintiff’s symptom  
12 testimony.

13 As noted, one of the ALJ’s proffered reasons for the adverse credibility  
14 determination—which Plaintiff did not acknowledge in her opening brief—was that  
15 Plaintiff’s description of her symptoms conflicted with Plaintiff’s activities of daily living.  
16 (AR at 26.) Under Ninth Circuit law, this is a permissible basis for discounting a claimant’s  
17 symptom testimony. *Molina v. Astrue*, 674 F.3d 1104, 1112-13 (9th Cir. 2012) (“[T]he  
18 ALJ may consider inconsistencies . . . between the testimony and the claimant’s conduct  
19 . . . and whether the claimant engages in daily activities inconsistent with the alleged  
20 symptoms. While a claimant need not vegetate in a dark room in order to be eligible for  
21 benefits, the ALJ may discredit a claimant’s testimony when the claimant reports  
22 participation in everyday activities indicating capacities that are transferable to a work  
23 setting. Even where those activities suggest some difficulty functioning, they may be  
24 grounds for discrediting the claimant’s testimony to the extent that they contradict claims  
25 of a totally debilitating impairment.”) (cleaned up); *Fry v. Berryhill*, 749 F. App’x 659,  
26 660 (9th Cir. 2019) (“The ALJ proffered specific, clear, and convincing reasons for  
27 discounting Fry’s testimony concerning the severity of her symptoms, including  
28 inconsistencies between her daily activities and alleged limitations . . .”).

1           The ALJ’s finding of inconsistency was supported by substantial evidence. During  
2 the hearing, Plaintiff testified that her mental health and physical conditions cause her to  
3 experience various extreme limitations in her daily activities. For example, as for her  
4 mental health conditions, Plaintiff testified that her depression causes her to repeatedly  
5 “self-isolate where [she] just [doesn’t] want to talk to anyone, deal with anyone,” that each  
6 depressive episode “last[s] a couple of days at least,” and that she experiences such  
7 depressive episodes “at least, maybe, once a week when it’s that bad.” (AR at 47-48.)  
8 Plaintiff also testified that she suffers from debilitating panic attacks “three to four times a  
9 month at least.” (*Id.* at 49.) Separately, as for physical conditions, Plaintiff testified that  
10 she suffers from constant (“the pain is there all the time”) back pain that’s “like a stabbing  
11 pain at times, burning, . . . it’s almost like someone’s like hitting you in the back.” (*Id.* at  
12 50.) Plaintiff further testified that this pain causes her to lay down for a minimum of two  
13 hours during “a typical eight-hour schedule” and that she can only stand for 15 minutes  
14 before she needs to sit down, can only walk for 15-20 minutes, and can only lift “less than  
15 ten pounds” without causing significant pain. (*Id.* at 51-52.) Additionally, Plaintiff  
16 testified that she suffers from vision problems that “greatly” “affect[] [her] ability to do  
17 things like watch TV or use a computer or even use [her] phone.” (*Id.* at 53.) However, in  
18 her function report, Plaintiff acknowledged that she does the laundry, cleans her house,  
19 goes shopping for an hour at a time, is able to pay her bills and handle her finances, and is  
20 able to “read[] and play[] games on the computer or phone” “daily very well.” (*Id.* at 295-  
21 96.) It was rational for the ALJ to make a finding of inconsistency under these  
22 circumstances. In particular, it was rational for the ALJ to find an inconsistency between  
23 Plaintiff’s description of her vision problems (*i.e.*, those problems “greatly affect” her  
24 ability to use her computer and phone) and Plaintiff’s acknowledgement in her function  
25 report that she reads and plays games on her computer and phone “daily very well.” And  
26 “[w]here the evidence is susceptible to more than one rational interpretation, one of which  
27 supports the ALJ’s decision, the ALJ’s conclusion must be upheld.” *Thomas*, 278 F.3d at  
28 954.

1           The Court also disagrees with Plaintiff’s contention that her ability “to do sporadic  
 2 activities at her own pace and with time for rest in between activities is not inconsistent  
 3 with this record and with the ability to sustain full time work.” (Doc. 16 at 7.) The Ninth  
 4 Circuit has recognized that “[i]nconsistencies between a claimant’s testimony and the  
 5 claimant’s reported activities provide a valid reason for an adverse credibility  
 6 determination.” *Burrell v. Colvin*, 775 F.3d 1133, 1137-38 (9th Cir. 2014). This makes  
 7 sense—a factfinder is entitled to discount the credibility of a witness who has been shown  
 8 to have testified in a false or exaggerated manner even if the impeaching daily activities  
 9 would not, alone, compel a finding of non-disability. *See also Tonapetyan v. Halter*, 242  
 10 F.3d 1144, 1148 (9th Cir. 2001) (recognizing that a “tendency to exaggerate” is a “specific  
 11 and convincing reason[]” for discrediting a claimant’s testimony); *Smolen v. Chater*, 80  
 12 F.3d 1273, 1284 (9th Cir. 1996) (“To determine whether the claimant’s testimony  
 13 regarding the severity of her symptoms is credible, the ALJ may consider . . . ordinary  
 14 techniques of credibility evaluation, such as . . . prior inconsistent statements concerning  
 15 the symptoms, and other testimony by the claimant that appears less than candid . . .”).  
 16 *See generally* 9th Cir. Model Jury Ins. 1.14 (“[I]f you decide that a witness has deliberately  
 17 testified untruthfully about something important, you may choose not to believe anything  
 18 that witness said.”).

19           Because the ALJ identified a clear and convincing reason, supported by substantial  
 20 evidence, for discrediting Plaintiff’s testimony, any other shortcomings in the ALJ’s  
 21 analysis were harmless. *Molina*, 674 F.3d at 1115 (“[S]everal of our cases have held that  
 22 an ALJ’s error was harmless where the ALJ provided one or more invalid reasons for  
 23 disbelieving a claimant’s testimony, but also provided valid reasons that were supported  
 24 by the record.”); *Carmickle v. Comm’r, Soc. Sec. Admin.*, 533 F.3d 1155, 1162-63 (9th Cir.  
 25 2008).

### 26           C.     **Remedy**

27           Plaintiff asks the Court to apply the “credit-as-true” rule, which would result in the  
 28 remand of her case for the limited purpose of calculating benefits. (Doc. 11 at 22.)

1 “The credit-as-true analysis has evolved in our circuit over time, thus providing a  
2 challenge for application by the district court.” *Leon v. Berryhill*, 880 F.3d 1041, 1044  
3 (9th Cir. 2017). As the Ninth Circuit has clarified in recent opinions, “[a]n automatic award  
4 of benefits in a disability benefits case is a rare and prophylactic exception to the well-  
5 established ordinary remand rule.” *Id.* See also *Treichler v. Comm’r of Soc. Sec. Admin.*,  
6 775 F.3d 1090, 1101 n.5 (9th Cir. 2014) (“[O]ur jurisprudence . . . requires remand for  
7 further proceedings in all but the rarest cases.”).

8 On the merits, “[t]he credit-as-true rule has three steps. First, we ask whether the  
9 ALJ has failed to provide legally sufficient reasons for rejecting evidence, whether  
10 claimant testimony or medical opinion. Second, we determine whether the record has been  
11 fully developed, whether there are outstanding issues that must be resolved before a  
12 determination of disability can be made, and whether further administrative proceedings  
13 would be useful. And third, if no outstanding issues remain and further proceedings would  
14 not be useful, only then do we have discretion to find the relevant testimony credible as a  
15 matter of law. Even if all three steps are met, the decision whether to remand a case for  
16 additional evidence or simply to award benefits is in our discretion.” *Washington v.*  
17 *Kijakazi*, 72 F.4th 1029, 1041 (9th Cir. 2023) (cleaned up). A district court properly  
18 exercises its discretion to remand for further proceedings where “there is serious doubt as  
19 to whether [the claimant] is disabled.” *Leon*, 880 F.3d at 1048. See also *Brown-Hunter*,  
20 806 F.3d at 495 (“[E]ven if all three requirements are met, we retain flexibility in  
21 determining the appropriate remedy. We may remand on an open record for further  
22 proceedings when the record as a whole creates serious doubt as to whether the claimant  
23 is, in fact, disabled within the meaning of the Social Security Act.”) (cleaned up).

24 The credit-as-true rule is inapplicable here. Although step one is satisfied in light  
25 of the ALJ’s failure to provide legally sufficient reasons for discrediting the opinions of  
26 Dr. Doust, step two is not—further administrative proceedings would be useful to enable  
27 the ALJ to address the analytical deficiencies discussed above, including why the ALJ  
28 viewed the largely “normal” physical examination findings (both by Dr. Doust and by other



1 medical providers) as inconsistent with Dr. Doust’s opinions and whether the unexplained,  
2 checkbox nature of Dr. Doust’s opinion form detracted from the supportability of Dr.  
3 Doust’s opinions. Alternatively, even if step two were satisfied, the Court would decline  
4 in its discretion to order a remand for benefits under step three because the record as a  
5 whole creates serious doubt as to whether Plaintiff is, in fact, disabled. As discussed, the  
6 ALJ permissibly discredited Plaintiff’s symptom testimony. *Cf. Leon*, 880 F.3d at 1048  
7 (“[W]e remand on an open record because there is serious doubt as to whether Leon is in  
8 fact disabled, given that the district court upheld the ALJ’s other findings.”). Additionally,  
9 Dr. Doust’s unexplained, checkbox opinions—which, as the Commissioner has pointed  
10 out, may be unpersuasive for additional reasons beyond those identified by the ALJ—  
11 conflict with the other medical opinions in the record. *Cf. Burrell v. Colvin*, 775 F.3d 1133,  
12 1141-42 (9th Cir. 2014) (rejecting the claimant’s argument that “because the ALJ’s reasons  
13 for discrediting her testimony and Dr. Riley’s assessment are legally insufficient, we have  
14 no choice but to . . . remand for an award of benefits” and concluding that a remand for  
15 further proceedings was the appropriate remedy because, even though “Claimant may be  
16 disabled,” “evidence in this record not discussed by the ALJ” cast serious doubt on the  
17 claim of disability).

18 Accordingly,

19 **IT IS ORDERED** that the decision of the ALJ is **reversed**. This matter is  
20 **remanded** for further proceedings. The Clerk shall enter judgment accordingly and  
21 terminate this action.

22 Dated this 16th day of October, 2023.

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Dominic W. Lanza  
United States District Judge  
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